IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.848 OF 2007

Dr.Tanveer Ahmed Ansari & Ors. .. Petitioners.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr.M.H.Solkar for the petitioners.
Ms.P.H.Kantharia APP for the State.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.
DATED : 3RD MAY, 2007.

P.C.:

. Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. The petitioners are sought to be tried for seven bomb blasts which took place in different places at Bombay. The petitioners have prayed for writ of Habeas Corpus to respondent nos.2, 3 and 4 directing them to forthwith produce the petitioners before this Court and to end illegal detention of the petitioners in MCOCA Special Case No.21/2006.

3. We have heard Mr.Solkar, learned counsel for the petitioner at great length. He contended that the petitioners have been arrested in connection with offences under Indian Penal Code, Unlawful Activities (Prevention) Act, 1967, Passports Act, 1967 and Maharashtra Control of Organised Crime Act, 1999

("MCOCA" for short) The charge sheet is filed under all the enactments. The learned counsel contended that the charge sheet is not accompanied with sanction orders as required under section 196 (1)(a) of the Code of Criminal Procedure for prosecuting the accused for the offences under sections 121-A, 122, 123, 124A of the Indian Penal Code. The learned counsel urged that under section 45(i) and (ii) of the Unlawful Activities (Prevention) Act, 1967 for any offences under Chapter III and IV thereof sanction of the Government is required, however, no such sanction is obtained in this case. The learned counsel further contended that the respondents have also failed to produce sanction as required under section 15 of the Passports Act, 1967. The learned counsel submitted that sanction under section 23(2) of MCOCA will not be sufficient and it was necessary for the respondents to obtain sanction under section 45 of the Unlawful Activities (Prevention) Act and sanction under section 15 of the Indian Passports Act and sanction under section 196(1)(a) of the Code of Criminal Procedure. The learned counsel urged that subsequent sanction will not validate the petitioners illegal detention. He submitted that since the cognizance of these offences is taken without sanction it is illegal and subsequent extention of judicial custody, remand of the petitioners under section 309 of the Code of Criminal Procedure also

becomes illegal. Hence the petitioners are under illegal detention. The learned counsel has also placed reliance upon **Manoj Rai and Others Vs. State of M.P. 1999 Supreme Court Cases (Cri) 98** and the judgment of **Kerala High Court in S.M.Purtado and etc. Vs. Dy.S.P., C.B.I. Cochin and etc. 1996 CRI.L.J.3042**.

4. We have also heard the learned A.P.P. The learned A.P.P. denied that the petitioners are under illegal detention. He submitted that as of today the petitioners are under legal detention. In our opinion it is not necessary to go into this aspect at this stage. Since charge sheet is filed, it will be always open for the petitioners to apply for discharge if they are so advised and the Special Court will consider all the arguments which are raised in this petition. If any application is filed by the petitioners we are sure that the Special Court will examine all the contentions raised by the petitioners. Attention of the Special Court can always be drawn to the the judgments on which the petitioners have placed reliance. We make it clear that we have not examined the merits of the case. The petition is dismissed.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)